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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 45(a) OF
THE Rules of the SUPREME COURT
OF ARIZONA

Supreme Court No.:

PETITION TO AMEND RULE 45(a)
OF THE Rules of the SUPREME
COURT OF ARIZONA

Pursuant to Rule 28, Arizona Rules of the Supreme Court Petitioners respectfully submit this Petition for consideration of an amendment to Rule 45 of the Rules of the Arizona Supreme Court to acknowledge the service provided by volunteer member of the State Bar of Arizona who serve as fee dispute arbitrators under the auspices of the State Bar of Arizona Fee Arbitration Committee. The Petition is consistent with the long-standing policy, custom and practice of the Supreme Court to encourage members of the Bar to assist in the dispute resolution process on a non-compensated basis. Rule 45(a) 4 currently provides for two hours of continuing legal education credit for service as a court appointed arbitrator if compensation is waived. Amending Rule 45 to provide a

1 continuing education credit for members who voluntarily serve as arbitrators to
2 resolve client/attorney or attorney/attorney fees dispute issues not only
3 encourages such participation but acknowledges the valuable service provided as
4 well as the educational benefit to the volunteer member required to adjudicate
5 the dispute.
6

7 **Basis of the Request**

8
9 Rule 45(a) 2 currently provides, in relevant part

10 “2. A minimum of three hours of continuing legal education activity each
11 educational year shall be in the area of professional responsibility. Professional
12 responsibility includes instruction in legal and judicial ethics, professionalism, and
13 malpractice prevention, and may include such topics as....., attorneys' fees,
14 client....., alternatives to litigation for managing conflict and resolving disputes,
15to the extent that professional responsibility is directly addressed in connection
16 with these topics.”
17

18 In *In re Connelly*, 203 Ariz. 413, 55 P.3d 756 (2002) this Court reviewed
19 the policy and practice behind fee dispute arbitration and heartily endorsed the
20 State Bar’s program of fee dispute arbitration:
21

22 “Several differences between them, however, support the conclusion
23 that the State Bar should utilize fee arbitration before considering
24 whether formal disciplinary action should follow. First, the State
25 Bar's announced policy encourages lawyers to submit fee disputes to
26 arbitration. The Comment to ER 1.5 urges that “[e]ach lawyer
27 should conscientiously consider submitting to [fee arbitration].” Ariz.
28 R. Sup.Ct. 42, ER 1.5, Comment, Disputes over Fees. Because the
Fee Arbitration Committee “shall not have jurisdiction over a dispute

1 ... [i]f an action on the dispute already is pending in another forum,”
2 Rules of Arbitration of Fee Disputes II.B.3, initiating disciplinary
3 action precludes parties from utilizing the preferred method of
4 arbitration. We do not approve of a procedure through which the
5 State Bar encourages fee arbitration on the one hand and, on the

6 Proceeding first to arbitration is particularly important when, as
7 occurred here, an attorney and client have explicitly agreed to
8 binding arbitration in the event of a fee dispute. By rejecting
9 Connelly's request that the matter first proceed to fee arbitration , the
10 State Bar, in effect, allowed Richman to sidestep his contractual
11 obligation to arbitrate the fee dispute.^{FN6}

12 Fee arbitration proceedings provide a better setting for initially
13 resolving fee disputes for other reasons. The parties are more likely
14 to obtain a prompt resolution through arbitration. The pertinent rules
15 direct that an arbitration hearing be set within ninety days after
16 receipt of an agreement to arbitrate. *Id.* at VII.A. In disciplinary
17 matters, in contrast, a hearing date should be set within 150 days of
18 filing a complaint. Ariz. R. Sup.Ct. 53(c) 6. The burden of proof also
19 differs between fee arbitration and formal disciplinary proceedings.
20 In arbitration , the attorney bears the burden of showing, by a
21 preponderance of the evidence, that she charged a reasonable fee.
22 Rules of Arbitration of Fee Disputes VI.F.

23 Finally, because fee arbitration determines whether a lawyer charged
24 a reasonable fee and, if not, the amount that represents a reasonable
25 fee, the award provides valuable information for a formal disciplinary
26 hearing, if one follows. For all those reasons, we conclude that fee
27 arbitration provides the appropriate forum for determining what
28 constitutes a reasonable fee for work performed in a particular case.
29 We conclude that the State Bar should follow its policy of
30 encouraging lawyers and clients to resolve fee disputes through
31 arbitration. We hold, therefore, that the State Bar should not have
32 begun formal disciplinary proceedings against Connelly until
33 arbitration of the fee dispute had concluded.” *Id.* at 417, 760.

Likewise the State Bar's Fee Arbitration Committee has a similar focus

Mission Statement

“The **Fee Arbitration Program** is a free, voluntary program for resolving fee disputes over \$500.00 between bar members and their clients, or under certain circumstances between bar members. Both client and attorney must agree to the arbitration for it to proceed. The files are processed in-house during the initial stages and then assigned to Fee Arbitration Committee Members to oversee, review, and appoint fee arbitrators to hear cases - they often serve as the arbitrators themselves. Arbitrators hold fee arbitration hearings and issue awards in Fee Arbitration matters assigned to them during the committee year. The Committee consists of 60 or more members and each member works independently on the matter(s) to which he/she is assigned. The decisions of the arbitrator(s) are final and binding, and are subject to only limited appeal through the superior court system under the Arizona Revised Statutes.”

Unlike the compulsory Court arbitration service mandated by Rule 72 and recognized by Supreme Court Rule 45(a)4, the equally important (if not more so) service as a fee dispute arbitrator is voluntary.

As noted, this Court has an established policy favoring arbitration and particularly in this area of client/attorney relations. Hearings often consume a half day or more, and in the majority of cases the client appears “pro per.” Decisions are generally final and binding unlike the Court mandated Rule 72 arbitration hearings. Having senior and experienced attorneys serve as fee arbitrators is doubly important- not only for appearance, but also for the benefit of wisdom gained from years of practice. The Bar has a difficulty finding sufficient volunteers, with many having to serve on several cases over the course

1 of a year to keep ahead of demand. Accordingly, to encourage participation by
2 more senior members of the Bar; acknowledgement by way of a CLE credit
3 would be at least minimal compensation for their time.
4

5 Every year more disputes are brought to the Bar for resolution, and the
6 current cadre of volunteers is hard pressed to keep ahead. This problem is so
7 urgent that it requires some additional incentive aside from philanthropy to fill
8 the ranks of those willing to serve.
9

10 **The Petitioner**

11 Petitioners are members of the Fee Arbitration Committee. It is the sole
12 Arizona Bar Committee expressly dedicated to protecting the rights of clients
13 from alleged over-charging of fees.
14

15 **Conclusion**

16 For the foregoing reasons, Petitioners ask this Court to amend Arizona
17 Supreme Court Rule 45(a) by adding a sub clause 5 as follows:
18

19 *“5. An active member of the bar, not exempted, who serves as an*
20 *arbitrator for a fee dispute resolution under the auspices of the State Bar Fee*
21 *Arbitration Committee is eligible for one hour of professional responsibility*
22 *continuing legal education activity credit for each hearing actually*
23 *conducted, to a maximum of two hours credit in any educational year, and this*
24 *credit shall be applied to satisfying the required three hours of professional*
25
26
27
28

1 *responsibility mandated for that educational year.”*

2 Specifically, Petitioners request the Court adopt, an amendment to
3 Arizona Rule of the Supreme Court 45, the proposed language in Exhibit 1.
4

5 **DATED** this 10th day of December, 2013.

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24
25 Electronically filed with the Clerk of the
26 Supreme Court of Arizona this 10th day of December, 2013

27 By: /s/ Julie Negrete

EXHIBIT 1

Proposed amendment to Supreme Court Rule 45

5. An active member of the bar, not exempted, who serves as an arbitrator for a fee dispute resolution under the auspices of the State Bar Fee Arbitration Committee is eligible for one hour of professional responsibility continuing legal education activity credit for each hearing actually conducted, to a maximum of two hours credit in any educational year, and this credit shall be applied to satisfying the required three hours of professional responsibility mandated for that educational year.

EXHIBIT 1